

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

RAMSEY COUNTY)	BMS CASE NO. 16-PA-0124
)	
)	
“EMPLOYER”)	
)	DECISION AND AWARD
And)	
)	
LAW ENFORCEMENT LABOR SERVICES, INC.)	RICHARD R. ANDERSON ARBITRATOR
)	
)	
“UNION”)	MARCH 10, 2016
)	

APPEARANCES

For the Employer

Becky Wodziak – Labor Relations Manager
Jack Serier – Ramsey County Chief Deputy
Michael Norstrom – Ramsey County Sergeant, Internal Affairs
Olletha Muhammad – Human Resource Generalist

For the Union

Scott Higbee – LELS Staff Attorney
Grievant – Deputy Sheriff¹
Andy Masterman – LELS Business Agent

JURISDICTION

The hearing in the above matter was conducted before Arbitrator Richard R. Anderson in St. Paul, Minnesota on February 10, 2016. Both parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced into evidence by both parties and received into the

¹ Throughout this Decision the Grievant’s name will be redacted.

record. The hearing closed on February 10, 2016. Post-hearing briefs were timely received on February 26, 2016, at which time the matter was then taken under advisement.

This matter is submitted to the undersigned Arbitrator pursuant to the terms of the parties' January 1, 2014 through December 31, 2016 collective bargaining agreement, hereinafter the Agreement, which was in effect at the time the issue in the grievance arose. (*Joint Exhibit 1*) The relevant language in Article 7 [*EMPLOYEE RIGHTS - GRIEVANCE PROCEDURE*] provides for arbitration to resolve all outstanding grievance issues. The parties stipulated that this matter does not involve contract arbitrability or any other substantive or procedural issues that would prevent this matter from being considered and is properly before the undersigned Arbitrator for final and binding resolution.

THE ISSUE

The issue agreed to by the parties was, "*Whether the Employer discharged the Grievant for just cause; and if not, what is an appropriate remedy?*"

BACKGROUND

Ramsey County, hereinafter the County or Employer, is Minnesota's smallest and most densely populated county located within the Twin Cities metropolitan area. The County provides a variety of programs and services including providing law enforcement services to more than 525,000 residents through its Sheriff's Department (RCSO) under the direction of Sheriff Matthew D. Bostrom. The RCSO is responsible for providing patrol, investigative, waterway and community services to County residents and visitors. It also provides direct law enforcement services to seven communities within the County, and serves as a regional partner providing services to cities and other counties as well the State and various federal agencies.

LELS, Inc., hereinafter the Union, through Local 322 is the recognized collective bargaining representative for all of the Employer's approximate 220 Deputy Sheriffs. The parties have a ten-year history of collective bargaining in this unit. Prior to this the unit was represented by Teamsters Local 320.

On June 19, 2015 the Grievant was notified in a written memorandum from RCSO Chief Deputy Jack Serier that he was suspended for twenty-five (25) days for violating various RCSO policies. The Memorandum cited the following reasons for his suspension. (*Union Exhibit 3 and Employer Exhibit 6*)

In accordance with the provisions of the Ramsey County Personnel Act, you are suspended without pay for (25) days - (5 days for improper Procedure and 20 days for improper Conduct) from your position as a Deputy Sheriff for the Ramsey County Sheriff's Office for the following reasons:

You were found to be in violation of Ramsey County Personnel Rules and Ramsey County Sheriff's Policy and Procedures.

-County Policy 24.1 Just Cause for Disciplinary Action under the Act;

-County Policy 24.2 - Examples of Just Cause for Disciplinary Action: specifically - (g) been found guilty of a criminal act which has a connection to the position held (i) engage in conduct unbecoming an officer or employee of the County: (i) violated any lawful and reasonable regulation, order, rule or directive made or given by a superior: (r) breached standards of conduct applicable to the employee's profession

-Sheriff's Office Policy Law Enforcement Code of Ethics, ie. "I will be exemplary in obeying the law and the regulations of my department." "I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence".

-Sheriff's Office Policy 1010, Reporting of Employee Convictions and Court Orders: specifically - 1010.3.2 Driving Related Citations and 1010.4 Reporting Procedure.

On March 08, 2014, you were arrested for DWI.² You contacted Sergeant Dunlop (to) report that you would not be coming into work, but consciously chose not to inform him of the reason for the absence. On February 13, 2015, you eventually pled guilty to a misdemeanor DWI charge. This arrest and conviction directly affected your ability to work due to the impact on your driver's license. You also failed to report the No Insurance citation and conviction on January 16, 2014 and the resulting 30-day license revocation issued on April 14, 2014 as a result of the No Insurance conviction.

The Grievant was also notified the same day in another written Memorandum from Chief Deputy Serier that he was being discharged effective June 20, 2015 from his position as a Deputy for violating various County and RCSO policies.³ (Joint Exhibit 2) The Memorandum stated:

In accordance with the provisions of the Ramsey County Personnel Act, you are discharged from your position as Deputy Sheriff for the Ramsey County Sheriff's Office for the following reasons:

² The terms DUI and DWI both refer to the act of operating a motor vehicle while impaired by alcohol or other substances. DUI is an acronym for "driving under the influence." DWI is an acronym for "driving while intoxicated." The two terms are used interchangeably in this Decision.

³ The Grievant had previously been put on notice by Memorandum from Chief Deputy Serier dated June 12, 2015 of the RCSO's intent to discharge him citing the same reasons listed in the Discharge Memorandum.

You were found to be in violation of Ramsey County Personnel Rules and Ramsey County Sheriff's Policy and Procedures. Specifically:

-Ramsey County Personnel Rule 24.1 Just Cause for Disciplinary Action Under the Act; 24.2 - Examples of Just Cause for Disciplinary Action; specifically (j) engage in conduct unbecoming an officer or employee of the County; (r) breached standards of conduct applicable to the employee's profession.

-Sheriff's Office Policy Law Enforcement Code of Ethics, i.e. "I will be exemplary in obeying the law and the regulations of my department." "I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence".

On June 06, 2015, you were involved in a motor vehicle accident which resulted in your being arrested for GM DWI. You consented to an Implied Consent test with a result of .017 BAC. This is your second DWI arrest and Implied Consent test with a result over .16 BAC within a 15 month time period.

This discharge is effective as of June 20, 2015. Per Union Contract Article 10.6 the discharge will be preceded by a five (5) day unpaid suspension. This Suspension will be effective for the following scheduled work days: June 15, 16, 17, 18, and 19, 2015.

On July 8, 2015 the Union filed a timely grievance with the Employer at Step 3 of the grievance procedure that only involved the discharge.⁴ (Joint Exhibit 4)

Nature of the Grievance:

(The Grievant) was disciplined through discharge.

Articles Violated:

This action by the Employer is in violation of Article 10 Discipline of the Collective Bargaining Agreement, in that it was without just cause.

Remedy:

The Union respectfully requests the County make (Grievant) whole, including but not limited to reinstating him to his former position, removal of related documentation from (Grievant's) personnel file, payment of wages and any lost benefits since the date of discharge, and any other actions required to make him whole.

On August 3, 2015 the Employer denied the Union's Step 3 grievance in a Memorandum addressed to the Union. (Joint Exhibit 5)

This is in response to the Step #3 grievance filed on behalf of (Grievant). The (Grievant) was dismissed from employment after being involved in a motor vehicle accident and arrested for a gross misdemeanor DWI on June 6, 2015. This arrest was the second DWI

⁴ Article 10.8 Grievances relating to this Article shall be initiated by the Union in Step 3 of the grievance procedure under Article 7.

incident in which (Grievant's) blood alcohol level test results exceeded 0.16 BAC; the previous incident was March 8, 2014.

In the grievance meeting, the Union asserted that termination was excessive, noted the (Grievant's) lengthy employment with the County and indicated that (Grievant) is addressing his alcoholism by seeking professional help and treatment.

We have reviewed the information provided by the Union on behalf of (Grievant's) and we find that there was just cause to dismiss him. While it is commendable that (Grievant) is seeking professional help and treatment for his alcoholism, we cannot agree to reinstate him as a Sheriff's Deputy. We hope (Grievant) will be successful in his recovery efforts and wish him well.

After failing to resolve the grievance, the Union filed for arbitration (exact date unknown). The undersigned Arbitrator was notified in writing on October 14, 2015 by Union Counsel Scott Higbee of my selection as the neutral arbitrator in this matter. Thereafter, a hearing date of February 10, 2016 was established.

RELEVANT CURRENT CONTRACT PROVISIONS

ARTICLE 7 — EMPLOYEE RIGHTS - GRIEVANCE PROCEDURE

7.1 Definition of a grievance. *A grievance is defined as a dispute or disagreement as to the interpretation of specific terms and conditions of this Agreement.*

7.5 Arbitrator's Authority

A. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union, and shall have no authority to make a decision on any other issue not so submitted.

B. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of laws, rules, or regulations having the force and effect of law. The arbitrator's decision shall be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision shall be binding on both the Employer and the Union and shall be based solely on the arbitrator's interpretation or application of the express terms of this Agreement and to the facts of the grievance presented.

ARTICLE — 10 DISCIPLINE

10.1 The Employer will discipline employees for just cause only. Discipline will be in the form of:

- a) Oral reprimand;*
- b) Written reprimand;*
- c) Suspension;*
- d) Reduction;*
- e) Discharge.*

EMPLOYER POLICIES

RAMSEY COUNTY PERSONNEL RULES

Rule 24: Causes for Disciplinary Action (Discharge, Suspension Without Pay and Demotion)

24.1 Just Cause for Disciplinary Action Under the Act. *As specified in Section 383A.294, subdivision 1 of the Act, no permanent, classified employee shall be subject to discharge, suspension without pay or reduction in pay or position without just cause. For the purposes of this rule, the term "other disciplinary action" shall include only those actions that result in an immediate, negative financial impact on an employee, and shall not include actions such as oral warnings/reprimands and written reprimands. Just cause, as defined in Section 383A.294, subdivision 2 of the Act, shall include, but not be limited to: failure to perform assigned duties, substandard performance, misconduct, insubordination and violation of written rules, policies and procedures.*

24.2 Examples of Just Cause for Disciplinary Action. *The following examples are declared to be just cause for disciplinary action, up to and including discharge; an employee has:*

- (g) been found guilty of a criminal act which has a connection to the position held;*
- (h) willfully violated any of the provisions of the Act or the rules made pursuant thereto;*
- (i) engaged in conduct unbecoming an officer or employee of the County;*
- (j) violated any lawful and reasonable regulation, order, rule or directive made or given by a superior;*
- (r) breached standards of conduct applicable to the employee's profession;*

RCSO POLICY 1010

1010.3.2 DRIVING RELATED CITATIONS

All employees shall promptly notify the Sheriff's Office, through their direct supervisor, if they have been cited or arrested for any driving related offense that may affect their driving status (multiple moving violations, DUI, CVO, etc.). This is important information for the Sheriff's Office to maintain in order to determine whether an employee has the ability to operate Sheriff's Office vehicles.

1010.4 REPORTING PROCEDURE

All employees and all retired deputies with a firearms endorsement shall promptly notify their immediate supervisor, or the Sheriff in the case of retired deputies, in writing of any past or current criminal arrest or conviction regardless of whether the matter is currently on appeal and regardless of the penalty or sentence, if any.

SHERIFF'S OFFICE POLICY LAW ENFORCEMENT CODE OF ETHICS, i.e. *"I will be exemplary in obeying the law and the regulations of my department." "I know that I alone am responsible for my own standard of professional performance and will take*

every reasonable opportunity to enhance and improve my level of knowledge and competence”.

FACTS

The Grievant began his employment as a Deputy Sheriff in the Patrol Division of the RCSO on June 8, 1998. Prior to late 2003 or early 2004, the Grievant began to develop issues related to alcohol dependency. The Grievant testified that his alcohol dependency stemmed from various life issues. This included medical issues involving the trachea malaise of one of his new born twin sons which required a number of surgeries and numerous trips to the hospital, the deterioration of his marriage, and the emotional effects from being struck by a car while assisting a Minnesota State Trooper at an accident scene.

The Grievant's first record of any disciplinary action was on November 3, 2009 when he received a three-day suspension for being in violation of RCSO Policy regarding Conduct Unbecoming an Officer, Ramsey County Workplace Conduct and Computer Use Policies.⁵ (*Employer Exhibit 6*) There was also a warning that a repetition of the conduct will result in further discipline, up to and including discharge.

The Grievant testified that his alcohol dependency deepened causing absenteeism and work place behavioral problems due to concentration issues associated with alcohol use. According to the testimony of Chief Deputy Serier, the Grievant had 271 hours of sick time in 2013 and 51 hours in early 2014. As a result the Grievant was put on a Performance Improvement Plan (PIP) on February 8, 2014. (*Id*) During a meeting with his supervisor, the Grievant indicated that he was having alcohol issues and that the issues were being dealt with in counseling. At this time the Grievant was offered Employee Assistance and offers for the arrangement of inpatient alcohol treatment by Commander Ty Sheridan to help him with his alcohol issues. According to the Grievant, he declined this offer because he was unwilling to admit that he had an alcohol problem or admit that he needed help or that he was “weak” if he accepted this help. (*Employer Exhibit 5 and 6*)

On March 17, 2014 the Grievant received a written reprimand for a PIP violation for not providing a valid doctor's slip attesting to the necessity for him to use sick leave on March 1,

⁵ This incident was in the Employer's Exhibit Book; however, it was not offered as an exhibit nor was any evidence offered at the hearing regarding it nor was it addressed in the Employer's brief. It is not known whether a grievance was filed.

2, and 3, 2014. (*Employer Exhibit 6*) This reprimand warned the Grievant that a reoccurrence of this or similar conduct could result in more severe discipline. There is no record that this reprimand was grieved. On April 2, 2014 the Grievant received a one-day suspension for another PIP violation for leaving work early during in-service training without providing a doctor's slip for his absence. (*Id*) This reprimand warned the Grievant that a continuation of this type of behavior will result in more severe disciplinary action. There is also no record of this suspension being grieved.

On March 8, 2014 the Grievant, while off-duty, was arrested by a Cambridge, Minnesota Police Officer for a gross misdemeanor Driving While Intoxicated (DWI). According to the Blood Alcohol Content (BAC) test, the Grievant registered a reading of .287, which was confirmed by the Datamaster Test (DMT) at the Isanti County Jail. (*Id*)⁶ Evidence adduced at the hearing disclosed that the Grievant did not immediately report his arrest to his supervisor. According to the Employer, the Grievant called his supervisor on March 8, 2014 from an "unknown" phone number and informed him "that he had done something stupid and would need to be sick for two days." (*Id*)⁷ The Grievant, while incarcerated, made another phone call to his supervisor on March 10, 2014 asking for another day of sick leave. (*Id*)

The Grievant admitted that he did not call in; rather, he had telephone issues and instructed his parents to contact the RCSO. There is no record that this happened; however, according to the testimony of Chief Deputy Serier, the RCSO was aware within a short time period that the Grievant had been arrested.

The evidence further established that the Grievant again was offered alcohol treatment options and declined. The Grievant, however, undertook an outside alcohol assessment evaluation at Regions Hospital in St. Paul, Minnesota and subsequently received a medical leave of absence from April 7, 2014 through May 4, 2014 to attend inpatient alcohol treatment at a private facility in Waverly, Minnesota. He also had been attending Alcohol Anonymous (AA) meetings.

The evidence also established that the Grievant failed to report to the RCSO a No Insurance Citation on January 16, 2014 and the resulting 30-day license revocation issued on

⁶ Cambridge Police Department Incident Report.

⁷ Email from Sergeant Dunlap to Commander Sheridan dated March 13, 2014.

April 14, 2014.⁸ The Grievant stated that during the course of the Internal Affairs (IA) investigation on April 22, 2015 he was made aware that he had to report this type of violation. This failure was cited as one of the reasons for the Grievant's suspension in the June 19, 2015 suspension letter.

The evidence adduced at the hearing also disclosed that pursuant to a Minnesota Department of Motor Vehicles (DMV) directive the Grievant's vehicle was fitted on May 29, 2014 with an interlocking device that prevented the vehicle from being started if it detected any alcohol. According to the Grievant's driving records, alcohol was detected on three occasions—12/22/14 with an initial BAC test of 0.040 at 06:34, 1/19/15 with an initial BAC test of 0.065 at 08:59 and a retest of 0.78 at 09:07, 2/16/15 with an initial BAC test of 0.026 at 10:23 and a retest of 0.022 at 10:29.⁹ (*Id*) According to the testimony of IA Sergeant Norstrem, the Grievant was scheduled to work on December 22, 2014; however, the Employer did not provide any corroborative records or whether his action, if true, violated Employer policy. The Grievant testified that he had relapses that included stress related to his divorce, engaging in social activity involving the resumption of dating and uncertainty of the pending IA investigation. The Grievant acknowledged during his testimony at the hearing that none of these factors were justification for starting to drink again. The interlocking device was finally removed on May 29, 2015.¹⁰

A formal Complaint was filed by Commander Sheridan on April 14, 2014. (*Employer Exhibit 7*) The Employer did not take any immediate disciplinary action against the Grievant in the aftermath of his March 8, 2014 DUI arrest; rather, it waited until there was a court ruling of his arrest and the completion of an IA investigation. Instead, the RCSO reassigned him from Patrol duties to duties at the Juvenile and Family Justice Center (JFJC) where he had no driving responsibilities. He initially worked a light duty assignment and returned to regular Court duties after his release from Waverly where he continued to work until his termination without any job performance issues.

The Grievant plead guilty to a misdemeanor DUI in Isanti County Court on February 13, 2015. The conditions imposed by the Court included contact probation officer and supervised

⁸ According to IA Sergeant Norstrem's Investigative Report, the Grievant plead guilty to a petty misdemeanor on March 26, 2014. (*Employer Exhibit 7*)

⁹ The Grievant admitted during the IA investigation and at the hearing that he was the individual who attempted to start the vehicle. Also, none of the BAC tests registered amounts above the legal driving limit of 0.08.

probation for two years, remain law-abiding, no alcohol related offenses, refrain from alcohol possession or use, random alcohol testing and a 90-day jail sentence with 75 days being stayed if he successfully completed the Court's sanctions. (*Id*) The Grievant testified that the delay in adjudicating his case was due to his attorney waiting until the Minnesota Supreme Court rendered its decision involving an implied consent issue to determine if it would have any impact on the Grievant's case.

It is not known when the RCSO began and/or continued the IA investigation of the Grievant's misconduct for which he was subsequently suspended. IA Sergeant Norstrom's Investigative Report disclosed that the Grievant was interviewed by him on April 22, 2015. (*Employer Exhibit 7*) It appears that IA Sergeant Norstrom issued his Investigative Report on June 2, 2015, the same day that he recommended to Sheriff Bostrom and Under Sheriff Dave Metusalem that the Grievant receive 20 and 5-day suspensions for his misconduct.¹¹ (*Id*) Both Under Sheriff Metusalem and Sheriff Bostrom affirmed IA Sergeant Norstrom's recommendation on June 10, 2015.¹² (*Id*)

On June 6, 2015 the Grievant went to Rosemount, Minnesota on his day off to help in field preparation for an upcoming baseball game. On the way there he stopped at a liquor store to pick up ice and other things for a baseball related function. While there he also purchased beer for himself which he consumed in the parking lot near the field where he was going to do the field preparation work. After leaving there he headed to Burnsville to watch a baseball game that his son was scheduled to play in. While traveling there he was involved in a minor rear end collision with another vehicle that had abruptly stopped in front of him.

The police were called and the Grievant was then arrested for gross misdemeanor DUI by a Burnsville, Minnesota Police Officer. According to the Officer's Incident Report, (*Employer Exhibit 5*) the Grievant was very cooperative and admitted that he would not be able to pass a BAC test. He agreed to take the test anyway and registered an initial alcohol reading of .022. After he was taken to the jail a DMT test was administered that disclosed an alcohol reading of 0.17. At his first opportunity the Grievant contacted his supervisor and informed him of his

¹⁰ The interlocking device monitoring was extended for 90 days each time the device detected alcohol.

¹¹ It had to be after May 29, 2015 since there was a reference in the Report to the interlocking device being removed on May 29, 2015.

¹² IA Sergeant Norstrom's recommendation sets forth the same reasons contained in the Notice of Suspension letter discussed earlier herein.

arrest; however, the Grievant admittedly did not notify his Isanti County probation officer until five days later.

It appears that IA began an immediate investigation unlike the delays associated with the Grievant's first DUI. A formal complaint was initiated by the RCSO on June 10, 2015 at which time the Grievant was placed on immediate administrative leave. (*Id*) The Grievant was interviewed by IA Sergeant Norstrom on June 11, 2015. During the interview the Grievant admitted to the facts surrounding his DUI arrest as contained in the June 11, 2015 IA Investigative Report.¹³ (*Id*)

On June 12, 2015 Chief Deputy Serier issued the Grievant a written Notice of Intent to Discharge citing a violation of the same Employer policies listed in IA Sergeant Norstrom's Recommendation. The Grievant received his Notice of Discharge on June 19, 2015 citing the same reasons contained in IA Sergeant Norstrom's Recommendation and Chief Deputy Serier's Notice of Intent to Discharge.

Earlier on June 10, 2015 the Grievant received an alcohol assessment evaluation at Regions Hospital which subsequently resulted in the recommendation that he seek inpatient alcohol treatment. He did not immediately seek medical treatment because his health insurance had lapsed after his termination. He did, however, continue to attend AA meetings.

The Grievant testified that after his arrest and discharge he was also dealing with both Isanti and Dakota counties that caused delays in him seeking medical treatment. Isanti County subsequently placed him on strict alcohol monitoring and required him to call in every day and intermittently appear there for a urine analysis and BAC test.

The Dakota County Court issued its ruling of his case in September 2015 and charged the Grievant with a gross misdemeanor. The Judge stayed his jail sentence and placed him under probation for three years. The Judge also placed him under house arrest for 28 days which began in early October 2015 and ended in early November. (*Id*) The house arrest included wearing an ankle monitoring device and requiring him to call into Dakota County several times a day at which time he was subject to alcohol screening with facial recognition. The Grievant further testified that he is currently under probation in Isanti County for another year and for up to three years from September 2015 in Dakota County.

¹³ IA Sergeant Norstrom's recommendation sets forth the reasons contained in the Notice of Discharge letter discussed earlier herein.

The Grievant testified that he has been on alcohol monitoring with one or both counties since his arrest in June 2015 and has been alcohol free since that date. The Grievant further testified that he recently had another alcohol assessment evaluation at Regions Hospital with a recommendation that he have out-patient treatment.¹⁴ At the time of the hearing he was reviewing the treatment facility options given to him by Regions Hospital. The Grievant also testified that he is currently attending AA meetings twice a week.

The Grievant also testified that he enjoyed working at the JFJC and had a good record while employed there and wanted to return to his old position. He further testified that he hit “rock bottom” in June 2015 and is very remorseful for his actions and is committed to remaining sober and believes that he can contribute valuable services to the JFJC system.

The Grievant’s last evaluation dated March 15, 2015 disclosed that he received an overall performance rating of Satisfactory Competent (SC) as well as an SC rating on Technical Expertise, Problem Solving and Decision Making, Sick Time, Personal and Professional Commitment, Personal Appearance. He also received the higher rated Proficiently Skilled (PS) rating for Communication and Teamwork. (*Union Exhibit 1*)¹⁵

EMPLOYER POSITION

The Employer’s position is that it had just cause to discipline the Grievant, and the appropriate discipline was termination. In support of this position the Employer argues:

- The Grievant was arrested for a gross misdemeanor DUI on March 8, 2014 and failed to immediately notify the RCSO of this arrest. He subsequently pled guilty to a misdemeanor DUI in Isanti County Court on February 13, 2015 at which time the Court placed him on probation with a number of driving and alcohol related restrictions. The Grievant was issued a twenty-five (25) day suspension for the misconduct associated with his March 8, 2014 misdemeanor crime on June 19, 2015.
- On June 6, 2015, the Grievant caused a car accident and was arrested for a gross misdemeanor DUI offense. This crime violated the terms of his guilty plea agreement from February 13, 2015. Specifically, he failed to remain law abiding; he purchased, possessed and consumed alcohol; he drove while intoxicated; he evaded the use of the

¹⁴ He received this recommendation the week before this hearing was held.

¹⁵ At the hearing the Employer contended that this was not a final rating since it was unsigned.

required interlock device by operating another person's motor vehicle and admittedly failed to advise his probation officer until five days after his arrest.

- The Employer maintains and enforces codes of ethical conduct for all its employees. The Ramsey County Personnel Rule 24.2 identifies numerous examples of just cause for disciplinary action. It is an undisputed fact that the Grievant engaged in numerous activities that establish just cause for termination including:

- 24.2 (g) been found guilty of a criminal act which has a connection to the position held;¹⁶
 - 24.2 (h) willfully violated any provisions of the Act or the rules made pursuant thereto;¹⁷
 - 24.2 (i) engaged in conduct unbecoming an officer or employee of the County;
- The RCSO also has long-established rules, policies and a Law Enforcement Code of Ethics; violations of these codes constitute just cause for discipline.
- RCSO Policy No.1010 specifies that an employee whose criminal conviction unduly restricts or prohibits that employee from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on paid or unpaid administrative leave, reassignment and/or termination. The Grievant's criminal convictions have repeatedly restricted and prevented him from fully and properly performing his duties as a Patrol Deputy.
- The RCSO Law Enforcement Code of Ethics is a solemn pledge, the tenants of which must be upheld by all RCSO Deputies. The Code promises all RCSO Deputies will keep their private life unsullied as an example to all and will behave in a manner that does not bring discredit to them or the RCSO in their personal or official life. The Deputies will also be exemplary in obeying the law and the regulations of their department and recognize that their badge is a symbol of public faith.
- The Grievant has repeatedly violated these rules and standards, failed to keep the solemn pledge required of all RCSO Deputies and has engaged in criminal behavior that has rendered him unfit for duty as a Deputy.

¹⁶ Not cited as a reason for the Grievant's termination in either the June 12, 2015 Notice of Intent to Discharge or the June 19, 2015 Notice of Discharge; however, it was cited as a reason in the June 19, 2015 Notice of Suspension.

- The parties' collective bargaining agreement also specifies that just cause is the acceptable standard for employee discipline. The Employer has met each element of just cause under the collective bargaining agreement.
- The Grievant had adequate written forewarnings that his repeated misconduct was unacceptable and would result in termination.
- The PIP issued to the Grievant in February of 2014 clearly indicated that further violations could result in termination of his employment. The written reprimand he received in March of 2014 warned that a recurrence could result in more severe discipline. The one (1) day Suspension he received in April 2014 contained a similar warning.
- The County and the RCSO have clear rules and ethical standards regarding any criminal misconduct that is well known to all of its Deputies. The Union did not dispute that the Grievant had adequate forewarning of the rules of conduct and ethical standards.
- The RCSO rules and standards are reasonable and necessary. The RCSO must be allowed to require that all Deputies adhere to these rules and honor their ethical pledge. The Union has not disputed that the RCSO rules of conduct and ethics are reasonable and necessary.
- The RCSO conducted a fair and objective investigation and there is no dispute that the investigation into the Grievant's criminal misconduct was fair and objective. The Grievant's rights to due process were respected at all times. The Union also offered no evidence or testimony to suggest that the IA investigation was unfair or subjective.
- There is substantial evidence of the Grievant's guilt. There is also no dispute that the Grievant has repeatedly violated the County and RCSO rules, standards and oaths. The Grievant has admitted, and the Union has acknowledged, that he is guilty of the misconduct for which he was terminated.
- There is no evidence of disparate treatment. The Union has not asserted that any other Deputies have engaged in similar misconduct and received lesser discipline. In fact the Employer provided unchallenged testimony that there are no Deputies who have committed misconduct comparable to the Grievant's.
- The discipline was appropriate. The Grievant was given numerous chances to correct his behavior and refrain from misconduct. He received progressive discipline, all of

which warned that additional misconduct would result in more severe discipline including termination. He disregarded the Employer's efforts to correct his behavior and he failed to obey the law. The RCSO was reasonable, fair and judicious in the disciplinary actions taken in this case. Additional discipline should not be required since the Grievant had more than sufficient opportunity to refrain from misconduct and remain an employee in good standing.

- The RCSO did not terminate the Grievant in an arbitrary or capricious manner. He was given numerous opportunities to seek assistance and remain a Deputy in good standing and failed to do so multiple times.
- The decision to terminate the Grievant was an appropriate response to his repeated misconduct, his disregard for public safety, and his failure to adhere to the necessary rules and ethical standards of the RCSO.
- The Grievant has failed to meet the most basic expectation of his profession, to be a trustworthy, law abiding person. He has forfeited the trust of his superiors, his fellow Deputies and the people of the County, whom he had pledged to serve.
- Chemical dependency is a disease; drunk driving is a volitional crime. The Grievant is responsible for his decisions to drive after consuming alcohol. He is responsible for deliberately evading the court-ordered interlock device on his vehicle by using another person's car.¹⁸ He endangered public safety and caused a car accident. He cannot be permitted to return to duty as a sworn law enforcement officer, entrusted with the public safety and responsible for enforcing the law.
- RCSO deputies are entrusted with public safety and called upon to serve and protect the community and are granted a legitimate monopoly of the use of force. Such tremendous responsibilities require tremendous faith and trust, from the leadership of the RCSO and the people of the County. The Grievant's criminal misconduct has broken that faith and destroyed that trust. He is no longer trusted by the Sheriff and cannot be trusted to ensure the peace and safety of the community. For this reason, most of all, his termination should be upheld.

UNION POSITION

¹⁸ The interlock device had been removed on May 29, 2015.

The Union's position is that while the Employer may have had justification in disciplining the Grievant, termination was not appropriate. In support of this position the Union argues:

- In this case there is little issue over the conduct involved. The Grievant was arrested twice for DUI. The dispositive issue is whether discharge is the required action.
- The County is rightly charged with a weighty burden in proving that it had just cause to terminate the employment of the Grievant, who in all likelihood will be unable to find future employment as a law enforcement officer if the discharge is upheld.
- Discharge has been fairly characterized as the industrial equivalent of capital punishment. It not only entails an immediate loss of income, but also robs an employee of acquired seniority and other contractual benefits. Moreover, a discharge is a strike against the employee's reputation, particularly within the industry in which he/she has chosen to serve. There is no overstating the impact of a discharge on an employee.
- The Union contends that in the unique circumstances of this case, which involves a long term and previously good employee who was going through the struggles and demons of alcohol addiction, discharge should not be an automatic step.
- All of the Grievant's work performance issues culminating with the PIP disciplines in early 2014 were the direct result of his alcohol usage issues.
- The Grievant's work record disclosed that he had no attendance or work performance issues after he was assigned to light duty in March 2014 and to regular duties at the JFJC after his release from the Waverly treatment facility on May 5, 2015. His March 25, 2015 evaluation reflects this satisfactory performance. This also demonstrates that he could also continue to perform satisfactorily if given the opportunity.
- An unfair component of the discharge is that the discharge was issued simultaneously with the 25-day suspension. In other words the Grievant did not have the benefit of a work suspension period to reflect upon his alcohol issues. What was absent was the down time which would have typically resulted from a suspension. A period during which no treatment was being conducted or work duties being performed would have provided the Grievant with the opportunity for a clear headed reflection on the impact of his alcohol issues. If the Grievant had served the 25-day suspension prior to the discharge it may have given him a greater incentive to progress through recovery.

- It should be noted that there is no issue that the Grievant did immediately report the second DUI to his supervisor. It demonstrates that the Grievant had learned his lesson from the previous DUI.
- The Union also notes that the Notice of Discharge specifically cites Ramsey County Personnel Rules 24.1 and 24.2 (i) and (r) as the provisions whose violation warrants discharge. Rule 24.2 provides examples of just cause for disciplinary action, up to and including discharge. Thus, by their terms these examples do not mandate discharge since discharge is listed as within the range of appropriate discipline. Further, the specific examples cited, (i) and (r), are generic and do not expressly apply to a second DUI.
- Again the Union does not dispute that some discipline is appropriate in light of the second DUI. The issue remains whether discharge is the appropriate and necessary response. In assessing whether just cause exists to support the discharge of the Grievant, certain mitigating factors should be considered. First, the Grievant is a long term employee who has generally provided the RCSO with good performance. Second, the conduct at issue is largely the result of the Grievant's alcohol dependency. Third, the Grievant has expressed his commitment to sobriety. Finally, the Grievant has acknowledged his misconduct and expressed his remorse for how his conduct has adversely impacted the RCSO.
- The evidence established that the Grievant, since his assignment to the JFJC, has been a valued and dependable employee. He was called upon to provide training for younger employees and is ready and willing to continue to provide that level of service. The events of the final stretch of his employment should not negate the years of valuable performance he provided previously. The Union believes that the Grievant is a long term employee worthy of being given a continued chance while he fights to overcome his alcohol issues.
- The monitoring systems which he is currently subject to will provide additional assurances of his continuing sobriety. The Grievant will also voluntarily accept any logical requirements suggested by the County to guarantee his continuing sobriety.

OPINION

The issue before the undersigned is whether the Employer had sufficient grounds to terminate the Grievant on June 20, 2015; and if not, what is an appropriate remedy? This issue presents a well-settled two-step analysis: first, whether the Grievant engaged in activity which gave the Employer just and merited cause to discipline him; and second, whether the discipline imposed was appropriate under all the relevant circumstances. It is the Employer's burden to show that the Grievant engaged in conduct warranting discipline and that the appropriate discipline was termination. In assessing appropriate discipline an arbitrator may rely on past misconduct and previous disciplinary actions.

The Employer argues that the Grievant deserved to be disciplined for alcohol related conduct, and termination was the appropriate remedy. The Union acknowledges that the Employer had just cause to discipline the Grievant; however, it contends that termination is not the appropriate discipline. I agree that there is overwhelming evidence that the Grievant should be disciplined for his actions in this matter. Since it has been established that the Employer had just cause to discipline the Grievant, the nature of the discipline will be examined.

The facts are generally uncontroverted. The Grievant had been employed as a Deputy for approximately seventeen (17) years before his termination. According to the evidence presented, the Grievant's actual work performance was satisfactory prior to and subsequent to the PIPs that were issued in early 2014.¹⁹ The evidence also disclosed that the Grievant's work misconduct that precipitated the PIPs was due to the Grievant's alcohol dependency and abuse. Similarly, the Grievant's off duty misconduct was directly attributed to alcohol dependency and abuse.

The Grievant was placed under a PIP on February 2014 attributed to work performance (sick leave) violations associated with the Grievant's off-duty alcohol issues. He subsequently received a written reprimand and one-day suspension for PIP violations in March and April 2014 due to repeated sick leave violations resulting from the Grievant's continued alcohol issues. The Employer offered the Grievant assistance with his alcohol issues, but he declined.

On March 8, 2014 the Grievant received his first DUI, but was not immediately disciplined. The evidence disclosed that the Grievant was first arrested for a DUI on March 8, 2014, but was not disciplined for this off-duty misconduct until June 19, 2015. Rather, the Grievant was reassigned to the JFJC where he did not have Patrol or driving duties.

The Grievant, after a lengthy legal delay, plead guilty in Isanti County Court to a misdemeanor DUI on February 13, 2015. The Court imposed a 90-day jail sentence with 75 days being stayed and two years of supervised probation. In addition, the Grievant had to remain law-abiding, have no alcohol related offenses, refrain from alcohol possession or use and submit to random alcohol testing.

After his DUI arrest the RCSO again offered assistance for his alcohol issues and once again he declined. Instead, he voluntarily participated in an alcohol assessment evaluation at Regions Hospital and subsequently voluntarily entered a thirty (30) day alcohol treatment program in Waverly which he completed on May 4, 2014. The Grievant also began to attend AA meetings after his initial DUI arrest.

The Grievant had an interlocking device placed on his vehicle by the DMV on May 29, 2014. On December 22, 2014, January 19, 2015 and February 16, 2015 the device detected alcohol and failed to start.²⁰ The device was finally removed from his vehicle on May 29, 2015.

Although a RCSO complaint was initiated on March 10, 2015 that would trigger an IA investigation, the Grievant was not immediately interviewed. IA Sergeant Norstrom finally interviewed the Grievant on April 22, 2015 and issued his Investigative Report and recommendations on June 2, 2015.²¹ Both Under Sheriff Metusalem and Sheriff Bostrom concurred on June 10, 2015 with IA Sergeant Norstrom's June 2, 2015 recommendation.

It is not known why it took so long for IA Sergeant Norstrom to interview the Grievant except that it appears that the RCSO waited until the Isanti County Court ruled on the Grievant's DUI arrest. Nevertheless there still was a six-week delay after the Grievant was

¹⁹ For the purposes of this Decision I am not including the 2009 3-day suspension since no evidence was presented regarding the circumstances surrounding this suspension. It is also not dispositive in determining the merits of discipline to be assessed.

²⁰ All of the readings were under the 0.08 legal driving limit.

²¹ It is not known why it took IA so long to interview the Grievant. Even if it was waiting for the Court's ruling why was there a delay from April 22 to June 2, 2015 before IA Sergeant Norstrom recommended suspension to higher management and further delays before the Grievant received his Notice of Suspension on June, 19, 2015.

interviewed until IA Sergeant Norstrom issued his Investigative Report and recommendation to Under Sheriff Metusalem and Sheriff Bostrom.

The Grievant was arrested on June 6, 2015 for a second DUI in Dakota County by a Burnsville Police Officer after he registered a BAC test reading of 0.17. The Grievant immediately notified the RCSO of his arrest but did not notify his probation officer until five days later. The RCSO did not wait for a formal Court ruling as it did with his first DUI and began an immediate investigation. A formal Complaint was initiated by the RCSO on June 10, 2015 at which time the Grievant was placed on immediate administrative leave. (*Id*) The Grievant was interviewed by IA Sergeant Norstrom on June 11, 2015. During the interview the Grievant admitted to the facts surrounding his DUI arrest. (*Id*)

IA Sergeant Norstrom issued his Investigative Report that same day to Sheriff Bostrom and recommended that the Grievant be terminated for violating County and RCSO rules stating, *“(The Grievant) was involved in a motor vehicle accident which resulted in him being arrested for GM DWI. He consented to an Implied Consent test with a result of .017 BAC. This test along with his arrest will impact the status of his driver's license and possibly trigger a violation of his probation on his previous DWI conviction. This arrest may directly affect his ability to work due to the impact on his driver's license status, possible additional jail time to serve on his prior offense due to the possibility of the probation violation, and future sentencing if convicted of this charge.”*

On June 12, 2015 the RCSO issued an Intent to Discharge Notice to the Grievant citing the same conduct IA Sergeant Norstrom recommended. On June 19, 2015 the Grievant received both his written Notice of Suspension and written Notice of Discharge, with the discharge to become effective June 20, 2015.

The Grievant pled guilty to a gross misdemeanor DUI in Dakota County Court on September 17, 2015. The Judge stayed his jail sentence and placed him under probation for three years. The Judge also placed him under house arrest for 28 days which began in early October 2015 and ended in early November. The house arrest included wearing an ankle monitoring device and requiring him to call into Dakota County several times a day at which time he was subject to alcohol screening with facial recognition. The Grievant is currently under alcohol screening and probation in Isanti County for another year and up to three years from September 2015 in Dakota County.

The Grievant went in for an alcohol assessment evaluation shortly after his termination where he received a recommendation for inpatient treatment. According to the Grievant, he could not afford this treatment because his insurance had lapsed after his termination. In addition, he also had conditions imposed by Isanti County where he was subject to random alcohol testing and had to physically go in for periodic urine analysis. He was also dealing with the Dakota County justice system resulting from his latest DUI and the requirements imposed by Dakota County Court after his guilty plea.

I as the Arbitrator must determine if the Grievant's conduct warranted discharge. It is generally accepted that an arbitrator's discretion to substitute his or her judgment regarding the appropriate penalty for that of management is not unlimited. If the contract expressly limits or if an arbitrator is persuaded that the discipline imposed was within the bounds of reasonableness, he/she may not impose a lesser penalty.²² This is true even if the arbitrator would likely have imposed a different penalty. On the other hand, if an arbitrator is persuaded the punishment imposed by an employer was beyond the bounds of reasonableness, he or she must conclude that the employer exceeded its managerial prerogatives and can impose a reduced penalty.

It is generally recognized that alcoholism is a disease that can affect an individual's behavior and job performance. All of the Grievant's misconduct is directly related to alcohol dependency and abuse that initially affected his work performance in early 2014 and culminated in his DUI arrests. This does not excuse the Grievant, as he remorsefully admitted, from receiving his PIPs or his off-duty DUIs. Individuals in law enforcement are rightly held to higher standards especially when they commit criminal acts involving the same type of behavior that they are charged to enforce. His two DUIs were undoubtedly an embarrassment to the RCSO.²³

If this was the whole story I would not hesitate to find that the Grievant engaged in serious misconduct for getting a second DUI within a 15-month period, and that the discipline levied against him was appropriate. There is, however, more to the story. The

²²Elkouri & Elkouri, *How Arbitration Works*, 956-962(6th ed. 1997)

²³I agree with the Employer that "*the ethical standards and behavioral expectations of the RCSO must be maintained. As a law enforcement agency, the RCSO must maintain the highest ethical and behavioral standards for all of its Deputies. It cannot hope to maintain good order and discipline if Deputies are permitted to engage in repeated acts of off-duty criminal misconduct. It also cannot maintain the public's trust if employees are allowed to repeatedly violate the Law Enforcement Code of Ethics or the law.*"

evidence must be evaluated to determine if there are any mitigating factors that would reduce the Employer's disciplinary decision since termination amounts to industrial capital punishment.

I agree with the Union that a suspension is supposed to be a corrective discipline. This is a basic tenet of work place suspension. The suspension gives an individual time to reflect on his/her misconduct and an opportunity for corrective behavior. The Grievant had no such opportunity since he was both suspended and discharged for different incidents of misconduct on the same day. This would not be in issue if the misconduct giving rise to both disciplines occurred in a relatively short time span.

The Grievant's March 8, 2014 DUI arrest triggered events that resulted in the Grievant's suspension some 15 months later. There are a number of unknowns associated with this delay. It appears that the Employer was holding in abeyance any disciplinary decision until after the Isanti County ruling of his arrest which occurred on February 13, 2015.

I also do not know why IA did not begin an immediate investigation and interview the Grievant after Commander Sheridan signed a formal Complaint on April 11, 2014 which was required before IA could begin an investigation. I also do not know why the RCSO was awaiting the Court's ruling since it had all of the information at its disposal necessary to make a disciplinary decision, save the Isanti County Court's final ruling.²⁴ After the Grievant's latest DUI arrest the Employer obviously felt it was unnecessary to wait for a Dakota County Court ruling before it initiated an investigation and disciplined the Grievant.

I am not convinced that the IA investigation and suspension decision was contingent upon the Isanti County Court's ruling; however, if it was, IA still waited an additional ten weeks until it interviewed the Grievant. Surely the RCSO could have interviewed the Grievant immediately after its April 11, 2014 formal Complaint and most assuredly immediately after the Court's ruling if indeed it was awaiting this ruling.²⁵

It could be argued that the RCSO's delay in implementing any suspension decision deprived the Grievant of any opportunity to correct the behavior he was ultimately

²⁴ On March 12, 2014 Deputy Chief Serier and Commander Sheridan met with the Grievant and were well aware of his gross misdemeanor DUI arrest and his failure to notify the RCSO of his arrest. A search of his DVM record would also have revealed his No Insurance citation.

²⁵ It is hard to believe that the RCSO could not have completed its entire investigation shortly after the Court's ruling.

terminated for. It could also be argued, although speculative, that it exacerbated the Grievant's stress issues that could have had a causative impact on his alcohol abuse. On the other hand it could be argued that the Grievant would have engaged in DUI activity anyway after having been previously suspended.

It is apparent that the Grievant's voluntary 30-day inpatient treatment, his attendance in the AA program and Isanti County alcohol monitoring had little effect on his alcohol related driving. We will never know if an early suspension that included Employer directed employee assistance and mandatory inpatient alcohol treatment or Employer alcohol monitoring could have deterred the Grievant's alcohol dependency and abuse and prevented his second DUI.²⁶

In reviewing the discipline imposed on an employee, an arbitrator must consider and weigh all relevant factors including the employee's seniority and prior work record, the seriousness of the misconduct and whether there were any mitigating factors present (both pre and post-discharge) that would lessen the nature of the discipline imposed.²⁷ It is permissible for arbitrators to consider post-discharge activity that is in the nature of rehabilitative conduct. As such, rehabilitative conduct that commenced after the discharge is generally considered as relevant, although not dispositive, of the just cause determination especially in situations involving drug or alcohol usage.²⁸ Thus, evidence that an employee has addressed the underlying causes giving rise to the discharge may be relevant to the remedy. (*Id*)

While we do not know if an earlier suspension or Employer mandated alcohol treatment would have prevented his second DUI, we do know that the Grievant has undertaken steps to eliminate his alcohol dependency and abuse since his discharge. The Grievant testified that he has been alcohol free since his June 6, 2015 DUI arrest which is corroborated by the Court directed continuous alcohol monitoring. He is currently attending AA meetings once or twice a week and has recently completed another alcohol assessment evaluation at Regions Hospital where it was recommended that he seek outpatient alcohol treatment. At the time of the hearing, he was evaluating a number of outpatient clinics. Once he begins the program

²⁶ It is not known if the RSCO could force the Grievant to accept Employee Assistance and require him to enroll in an alcohol treatment program.

²⁷ Elkouri & Elkouri, *How Arbitration Works*, 978-980 (6th ed. 1997)

²⁸ Marvin F. Hill, Jr. and Anthony V. Sinicropi, *Evidence in Arbitration* (BNA Books, 2 ed. 1987)

he will initially be meeting with a counselor three or four times a week, and then once a week after he has been in the program for six months.

The Grievant further testified that he is very remorseful and takes full responsibility for his actions. He also admits that he was wrong in trying to personally treat his alcohol dependency and should have heeded the RCSO's Employee Assistance advice after his PIPs and first DUI. He now recognizes that he needed more help with his alcohol dependency and is currently seeking this help.

The evidence discloses that the Grievant had no recorded performance issues during his entire pre-discharge tenure at the JFJC. He also received an overall satisfactory job performance ranking by his supervisor in his March 25, 2015 annual appraisal where he exceeded the satisfactory threshold in two of the seven job performance categories evaluated.²⁹ The Grievant further stated that he enjoyed working at the JFJC where he had no driving or Patrol driving enforcement duties. He is committed to being alcohol free and wants to return to the JFJC where he is capable of exhibiting a positive job performance record.

CONCLUSION

The Employer had just cause to discipline the Grievant and but for certain mitigating factors, the Employer's decision to discharge the Grievant would hold up; however, mitigating factors presented herein require examination if discipline short of termination is warranted.³⁰ I am concerned with the Employer's delays in investigating and ultimately suspending the Grievant which deprived the Grievant of an opportunity to correct his behavior³¹. Although no grievance was filed over his suspension it still raises due process concerns because it unduly delayed the assignment or enforcement of discipline and is relevant in reviewing the Grievant's disciplinary penalty. (*Id* 981)

I also have concerns about the way the Employer handled the Grievant's alcohol dependency. The RCSO knew when the Grievant was issued his PIPs that he had alcohol dependency and abuse issues. It became readily apparent to the Employer that the Grievant's

²⁹ The Employer contended that this was an unsigned appraisal and not final; however, nothing was presented to rebuke this appraisal.

³⁰ There is no contractual provision that limits my authority in fashioning a remedy consistent with the evidence presented in this matter.

³¹ The Employer proved that it did not have to wait for the Dakota County Court DUI ruling before immediately discharging him. It also wasted no time in initiating an IA investigation and termination recommendation.

alcohol abuse was out of control after his March 2014 DUI arrest. While the Employer offered to help the Grievant in seeking Employee Assistance, I believe it could and should have done more. These factors are also relevant to reviewing the Grievant's disciplinary penalty.

The Grievant's alcohol dependency was the root of all his problems and formed the basis for his eventual discharge. The Grievant's post-discharge conduct and rehabilitative efforts to seriously eliminate his alcohol dependency and abuse warrants serious consideration in reviewing the Grievant's disciplinary penalty. There is no guarantee that the Grievant will maintain an alcohol free lifestyle, but based upon what I heard and observed at the hearing, the Grievant is profoundly committed to doing so.

The Grievant's standing as a good, valued and long-tenured employee with a good job performance record, except for his alcohol related issues, is another relevant factor in reviewing the Grievant's disciplinary penalty. So is the fact that if the Grievant was reinstated to his job duties at the JFJC, he would have no driving or traffic enforcement responsibilities. His non-driving duties also negate one of the reasons that he was discharged for and therefore would not be employable. A return to the JFJC where he compiled a good job record in spite of his alcohol dependency would eliminate any unforeseen legal complications or general public trust concerns that could pose a potential embarrassment for the Employer and the RCSO. These factors are also relevant in reviewing the Grievant's disciplinary penalty.

Based upon all the mitigating factors, especially the Grievant's post-discharge and rehabilitative conduct, I conclude that the Grievant deserves another chance to prove he has rehabilitated himself and would be worthy of reinstatement to the JFJC. I am, therefore, rescinding the Employer's discharge decision due to mitigating factors; however, my decision is not without severe consequences for the Grievant. The Grievant engaged in serious misconduct and must pay a penalty commiserate with this misconduct. The penalty that I am imposing will act as a strong deterrent to prevent any alcohol recidivism.

Although the Grievant is being reinstated to his former position at the JFJC, he is being suspended with a loss of all wages and benefits with the exception of seniority benefits from the date of his termination until the date of this decision. The Grievant will also be required to complete outpatient alcohol treatment as a condition of continued employment. Since the

Grievant is already subject to alcohol monitoring by Isanti and/or Dakota counties, no further monitoring is recommended unless the Employer has sufficient grounds to do so. I cannot advocate any stronger that the Grievant's reinstatement is his "last chance" and any further alcohol related issues will be grounds for immediate termination.

AWARD

IT IS HEREBY ORDERED that the grievance in the above entitled matter as it relates to the imposition of discipline shall be and hereby is dismissed for the reasons set forth in this Decision.

IT IS FURTHER ORDERED that the grievance in the above entitled matter as it relates to the type of discipline imposed shall be and hereby is sustained for the reasons set forth in this Decision.

IT IS FURTHER ORDERED the Grievant's termination is reduced to a suspension and any reference to his termination shall be expunged from his personnel file, consistent with my Decision herein.

IT IS FURTHER ORDERED that the Grievant shall forfeit all wages and other benefits with the exception of seniority for the time period that he is suspended and complete an outpatient alcohol treatment program as a condition of continued employment, consistent with my Decision herein.

The undersigned Arbitrator will retain jurisdiction in this matter for a period of forty-five (45) days from the receipt of this Award to resolve any matters relative to implementation.

Dated: March 10, 2016

Richard R. Anderson, Arbitrator